In Vice Chancellor Wood's Court.

HORNE *vs.* ANGLO-AUSTRALIAN INSURANCE COMPANY.

Where there is no provision in a policy upon the life of the assured, that it should be void if the party whose life was insured should die by his own hands, &c., the Court will not declare such policy void if the party assured commits suicide.

A policy for £300 upon the life of a Mr. Horne had been effected by himself in the office of the British Provident Insurance Company, which had been amalgamated with the Anglo-Australian Insurance Company, of which company Mr. Horne had been a director.

No provision was contained in the policy that in case the assured should die by duelling, or by his own hands, or the hands of justice, it should become void.

Mr. Horne committed suicide in November, 1857, and the effect of the verdict of the coroner's jury was, that he had destroyed himself whilst in a state of mental derangement.

A bill was subsequently filed by his personal representative, to have an account taken between Mr. Horne and the Anglo-Australian Company of all the dealings and transactions between them.

Another policy had been effected by Mr. Horne on his own life, which did contain the proviso against duelling, &c.

It appeared by the bill that Mr. Horne had from time to time advanced money upon loan to the Anglo-Australian Company, and that various sums were at the time of his death due to him from the company for interest on these loans, for his salary as director, &c.

The principal question turned upon the point, whether the first-mentioned policy had become void on the grounds of general public policy, it not containing any provision against suicide, &c., as above mentioned.

Willcock, Q.C. and *Jolliffe* for the plaintiffs, the representatives of Mr. Horne.

Sir *H. Cairns*, Q.C. and *Shebbeare* for the Anglo-Australian Company.

Cole for the British Provident Company, who had repudiated the amalgamation with the Anglo-Australian Company.

The principal cases cited were: *Dufaur* vs. *The Professional Life Assurance Company*, 25 Beav. 602; *Borradaile* vs. *Hunter*, 5 Man. & Gr. 640; *Vyse* vs. *Wakefield*, 6 Mee. & W. 442; *Moore* vs. *Woolsey*, 4 Ell. & B. 243; *Pritchard* vs. *Merchants' and Tradesmen's Life Assurance Company*, 27 L. J. 169, C. P.; *Wainwright* vs. *Bland*, 1 Moo. & Rob. 480.

The Vice-Chancellor, after stating shortly the facts of the case, said that, as to the £300 policy, which contained no provision against duelling, suicide, &c., he was of opinion that the death of Mr. Horne by his own hands, while in a state of mental derangement, had not the effect of vitiating the policy. In *Fauntleroy's* case, 2 Dow. & Cl. 1, it was held by the H. of L. that a policy was, by necessary inference vacated, and no longer payable when the assured had died by the hand of justice; and this on the ground that it was against public policy that any assurance should be extended to provide against such an event, and thus afford encouragement to crime. The same argument might be urged in a case of *felo de se*, where a man in a perfectly sane state committed suicide. But no such case arose here. The deceased was found to have been of unsound mind, and therefore had committed no legal offence. Where there was an express contract that in the event of suicide no payment should be made upon the policy, then the question might arise whether suicide in a state of mental derangement was contemplated in the exception. But this was quite distinct from considerations of public policy. Again, if the particular event, "while in a state of insanity," had been excepted in the policy, there would have been nothing irrational or morally unreasonable in such a contract. But, in the absence of this provision, there was no principle of public policy to forbid payment upon a death which arose from no crime, but from a mere accident, just as much as if the person had fallen from a house or been drowned. There was nothing to induce him (the Vice-Chancellor) to say that the policy was void upon this death, which had taken place while the assured was in a state of mental derangement; nor was there

any principle of public policy which prevented an assurance against insanity and its consequences. It must, therefore, be declared that the policy for £300 was valid, and that the plaintiff, as personal representative, was entitled, notwithstanding the circumstances under which Mr. Horne had died, to the benefit of it.

As to other points, an inquiry in chambers directed.

LEGAL MISCELLANY.

MARTIAL LAW.

We can readily perceive how, in the present posture of our National affairs, many questions may arise, from time to time, touching the precise relation which the military bear to the civil powers of the State in moments of extreme danger, when the safety and the life of the body politic are imperilled by the violence and treachery of internal foes. The general inquiry, which the complexion of recent events seems to have induced, is, Under what circumstances and by whose authority the municipal law of the land will be rightfully superseded by what is known as the military or martial law?

Martial law has been variously defined. One English authority has described it as "the law of war, that depends upon the just but arbitrary power and pleasure of the king or his lieutenant: for though the king doth not make any laws but by common consent in Parliament, yet in time of war, by reason of the necessity of it, to guard against dangers that so often arise, he useth absolute power, so that his word is law."[1] This description is somewhat confused and obscure, but it seems to correspond substantially with the more concise definition of Sir Matthew Hale, who says that "martial law is no law at all, but something indulged rather than allowed by

[1] Smith de Repub. Angl. lib. 2, c. 4. Bacon, in one of his political works, gives us certain "Cases of the King's Prerogative," and among them we find this: "The king hath power, in time of war, to execute martial law, and to appoint all officers of war at his pleasure" Bacon, probably, uses the term "*martial law*" for *military law*—a distinction that we endeavor to make clear in the text of this essay.—*Vide Bacon's Works, Spedding & Ellis' Ed., vol. xv., p.* 375.